

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17779 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MADHIBEN WIFE OF HIMMATBHAI HIRABHAI MALI

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 17779 of 2003
MS BANNA S DUTTA for Petitioner No. 1
Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this
petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 04.12.2003 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that five prohibition offences were registered against him before Southern Division Prohibition Police Station at C.R.No.1080, 1097, 1122, 1215 and 1536 of 2003 on 2.8.03, 6.8.03, 12.8.03, 27.8.03 and 25.10.2003 relating to offences punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities and that the petitioner was a headstrong person. On the strength of the aforesaid registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that simply because of the fact that few offences were registered, it could not be said that there was a threat to public order. It has also been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers. At the hearing, learned AGP has drawn my attention to the affidavit filed by the detaining authority filed at page no.16.

6. During the course of hearing, learned Advocate for the petitioner has contended that simply because a few prohibition offences have been registered against the petitioner, it cannot be said that the petitioner's activities were likely to cause a threat to public order.

7. In support of the said argument, learned Advocate for the petitioner has relied upon a decision of the Supreme Court support in the case of Piyush Kantilal Mehta V/s. Commissioner of Police, Ahmedabad City & Anr. reported in AIR 1989 SC 491. It would be worthwhile to refer to the observations made in paras 17 and 18 of the said decision as follows:

Para 17 : "Does the expression 'public order' take in every kind of infraction of order or only some categories thereof? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individual and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

Para 18 : In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be

that the petitioner is a bootlegger within the meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question given rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

7. In view of the aforesaid pronouncement of the Hon'ble Supreme Court, it would be difficult to accept that simply because a solitary prohibition offence has been registered, the petitioner could be treated to be a bootlegger and his activities would lead to a threat to public order. On following the principles enunciated in the above decision and considering the fact that the facts in the said case are similar to the facts of the present case, it will be clear that the detention order in the present case passed on the strength of the registration of few cases, cannot be sustained in the eye of law.

8. So far as the statements of witnesses are concerned, even looking the said statements, it cannot be said that there was violation of public order. When it is not found that the activities of the petitioner were likely to cause a threat to public order, then in that event, the order of detention cannot be justified in the eye of law. In that view of the matter, the impugned order of detention is required to be quashed and set aside and the petitioner is required to be released from detention.

9. For the foregoing reasons, this petition is allowed. The impugned order dated 4.12.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp